

**Town of Milford
Zoning Board of Adjustment
February 6, 2014
Thomas Lorden
Case #2014-02
Variance**

Present: Fletcher Seagroves, Chair
Laura Horning
Kevin Taylor
Michael Thornton

Absent: Zach Tripp
Paul Butler, Alternate
Bob Pichette, Alternate
Len Harten, Alternate
Joan Dargie, Alternate
Katherine Bauer, Selectmen's Representative

Secretary: Peg Ouellette

The applicant, Thomas Lorden, owner of Map 49, Lot 2, off Crestwood Ln, in the Residence "R" District, is requesting a Variance from Article V, Section 5.04.4:A, to permit a single family residence on a lot with no frontage on a Class V or better road.
This is a re-application for case #2012-21, granted 10/04/12, which subsequently expired 10/04/13.

Minutes approved and signed on February 20, 2014.

Fletcher Seagroves, Chair, opened the meeting by stating the hearings are held in accordance with the Town of Milford Zoning Ordinances and the applicable New Hampshire statutes. He informed all of the procedures of the Board and introduced the Board members present. He read the notice of hearing into the record. The list of abutters was read; Thomas Lorden and his attorney, C. Wilson Sullivan, were present and abutters John and Linda Osgood, were present.

F. Seagroves informed the applicant and his attorney that they would need three affirmative votes for approval. Since there were only four members present they could sign a waiver stating that they were willing to proceed with less than the full Board. T. Lorden signed the waiver.

F. Seagroves then read from the Ordinance, Section 10.06.0 regarding expiration of a variance and granting of an extension.

C. Sullivan stated that Milford's ordinance was unique, requiring a legal lot to have 200 ft on a Class V road with no exception for a grandfathered lot. This 15 acre lot is presumed to be at least 100 years old and has been a separate lot for at least that long. In order to get a building permit for the property he had access, but needed a variance from restrictions in the zoning ordinance. The applicant acquired an easement from neighbors for access and Bill Parker has approved a driveway permit since the last time they appeared before the ZBA. This is a classic variance case. It is in a residential area and set way back so it is nearly invisible. There is no harm to the public; will not decrease anyone's property value. It is a hardship—self-evident.

F. Seagroves asked for questions from the Board; there were none.

C. Sullivan said the easements have been recorded. They didn't have a buyer so the variance lapsed. The easement is only 50 ft and it will not be a public safety hazard.

T. Lorden said that Mr. Riendeau, the DPW Director, came out and approved the access driveway for 25 ft but it is 20 ft. Both Bill Parker and Rick Riendeau said there was no need to go back to the ZBA, but the attorney and other parties said to do so.

F. Seagroves agreed they were safer to do so.

L. Horning said the ordinance called for certain criteria.

F. Seagroves said that was the reason he read it and technically they had to come back. They were not requesting an extension, but asking for a variance.

C. Sullivan said they were technically asking for an extension, but there was nothing in the Ordinance, so they are requesting a variance. There is no provision in the Zoning Ordinance.

L. Horning said there is no procedural process.

F. Seagroves said if the variance is granted again, they would have to get started within a year.

C. Sullivan felt that would not be an issue.

F. Seagroves opened the meeting for public comment; there being none, the public portion of the meeting was closed.

C. Sullivan read the application into the record.

1. Granting the variance would not be contrary to the public interest because:

Public interest would be served because this use is allowed in the subject zone and the public interest sought to be maintained would not be impaired by the granting of the variance.

2. The use is not contrary to the spirit of the ordinance because:

This use is allowed in this zone and is not contrary to the spirit because the spirit and intent of the ordinance is to promote orderly growth and the appropriate use of land. Considering all of the competing uses surrounding the subject site the Board's approval of this request will accomplish just that: promote the orderly growth and appropriate use of land.

3. Granting the variance would do substantial justice because:

Allows owner to use its property in a reasonable and permitted manner with no negative impact on abutters and the surrounding neighborhood.

4. The proposed variance would not diminish surrounding property values because:

The addition of a single family home contiguous to a residential subdivision is by definition compatible with other uses in its District as a permitted use. Because it is consistent with existing

uses, the values of surrounding property will not be diminished by the addition of this consistent and compatible use with those around it.

5. Denial of the variance would result in unnecessary hardship.

A). “Unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

This property is different from others in its immediate area because it is an undeveloped parcel adjacent to an existing subdivision with granted access rights through the subdivision.

The second prong of this test is that there must be no connection between the “general public purposes” of the ordinance in requiring frontage on a public way. The Ordinance itself is silent as to the general public purposes of frontage requirements. Accordingly then the general purposes of the Ordinance need to be reviewed. Section 1.01.D of the Milford Zoning Ordinance states that “[t]he regulations...are for the purpose of promoting the public health, safety, morals, general welfare and civil rights of the Town of Milford...” It is difficult to understand that allowing this site, abutting other similar permitted uses would somehow be a threat or damaging to the health, safety and general welfare of the citizens of Milford.

While the Milford Ordinance is silent as to the specific purposes of minimum frontage, the generally accepted basis for the requirement is that “minimum street frontage requirements control density and the open space required around dwellings because they effectively determine the size of the lot.” Land Use Law (5th Ed.) by Daniel R. Mandecker, 2003, LexisNexis, and “they are often justified by their beneficial role in preserving light, air and open space in promoting orderly development in the neighborhood, which serves the general welfare.” Zoning and Land Controls by Patrick J. Rouan, 1988, Matthew Bender, 167 NH 497 (1977).

Clearly the use of this lot as a single family house lot without public way frontage will not be contrary to the purposes for the requirement. The density and open space will remain the same. There will be no impact on preserving light, air and open space. Clearly this is in keeping with the orderly development of the neighborhood.

ii) and, the proposed use is a reasonable one because:

This use is reasonable for the site because it is an allowed use in the Residential R zone.

B). If the criteria in Section (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance. A variance is therefore necessary to enable a reasonable use of the property because:

The Ordinance requires road frontage for all uses denying this reasonable use creates an unnecessary hardship because under no circumstances can the property be used as permitted.

F. Seagroves said he had originally had some concerns. He thought the size of the roadway for access for emergency vehicles had been addressed.

C. Sullivan said they need to get a permit from the Selectmen and know the Fire Department will inspect.

L. Horning said she was happy to see the example of the waiver, relieving the Town of culpability for maintaining or liability for that stretch of road. She wished more property owners would consider that type of thing before coming to the ZBA especially when it is a Class V road.

There were no other questions from the Board.

1. Would granting the variance not be contrary to the public interest?

L. Horning - yes. It would not be contrary to the public interest.

K. Taylor – yes

M. Thornton – yes

F. Seagroves – yes, because the book states the impact to the applicant must meet any burden higher than required by statute and demonstrate public benefit if the variance were granted. They only must show there would be no harm. He would say there was no harm.

2. Could the variance be granted without violating the spirit of the ordinance?

K. Taylor – yes

M. Thornton – yes

L. Horning – yes, the spirit of the Ordinance was to make sure they maintain density and things of that nature. She didn't think a 15 acre plat of land had any significant density issues.

M. Thornton inquired about the two acre minimum.

C. Sullivan responded that the Ordinance requires two acres, but the parcel is fifteen acres and they would be using the whole parcel.

M. Thornton - yes

F. Seagroves – yes. They were talking about health, safety, and general welfare. He brought up his concerns earlier and believed they were taken care of.

3. Would granting the variance do substantial justice?

M. Thornton – yes

K. Taylor – yes

L. Horning – yes, as pointed out by the applicant and attorney, the lot cannot be used for any other purpose.

F. Seagroves – yes, any loss to the individual not outweighed by gain to the public is an injustice. He didn't see the general public would gain by denial.

4. Could the variance be granted without diminishing the value of abutting property?

L. Horning – yes, she didn't believe there would be any diminution of surrounding property values. It would accentuate values in surrounding area. It will be an asset to the area adding another neighbor.

M. Thornton – yes

K. Taylor – yes

F. Seagroves – yes, he didn't see it would diminish value of abutting properties with 15 acres of land. He didn't believe the owner would build right on the edge of the 15 acres. He viewed it, and there appeared to be a buffer of trees between the properties.

5. Would denial of the variance result in unnecessary hardship taking the following into consideration:

A)i. No fair and substantial relationship exists between the general public purposes of the ordinance provisions and the specific application of that provision to the property; B) If the criteria in subparagraph A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable use of it.

ii. The proposed use is a reasonable one.

K. Taylor – yes. If they deny, applicant has no way to get into his property and would cause hardship.

M. Thornton – yes, denial absolutely results in denial of use, almost a taking of the property. It would be an unnecessary hardship.

L. Horning agreed. Denial would result in unnecessary hardship. No fair and substantial relationship exists between the general purposes of the ordinance and the specific application of that provision to the property, and the proposed use is a reasonable one. This is why the Ordinance was written, for properties effectively landlocked and that cannot follow the ordinance in access to the property. Without relief, he cannot use his property to its fullest potential.

F. Seagroves agreed. "Owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the Ordinance. This is a perfect example, where it is landlocked with no way of getting into it with other roads. This looks like the best way to do it. He said yes.

F. Seagroves called for a vote.

Would granting the variance not be contrary to the public interest?

L. Horning – yes; K. Taylor – yes; M. Thornton – yes; F. Seagroves – yes

Could the variance be granted without violating the spirit of the ordinance?

K. Taylor – yes; M. Thornton – yes; L. Horning – yes; F. Seagroves – yes

Would granting the variance do substantial justice?

M. Thornton – yes; K. Taylor – yes; L. Horning – yes; F. Seagroves – yes

Could the variance be granted without diminishing the value of surrounding property?

L. Horning – yes; M. Thornton – yes; K. Taylor – yes; F. Seagroves – yes

Would denial of the variance result in unnecessary hardship?

L. Horning – yes; M. Thornton – yes; K. Taylor – yes; F. Seagroves – yes

L Horning made a motion to approve Case #2014-02.

K. Taylor seconded.

Final Vote:

L. Horning – yes; M. Thornton – yes; K. Taylor – yes; F. Seagroves – yes

The Chair informed the applicant he had been approved and reminded him of the thirty-day appeal period.